

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5243 of 2018

Arising Out of PS.Case No. -320 Year- 2017 Thana -KOTWALI District- PATNA

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1. Jagdish Prasad @ Jagadish Prasad, S/o Late Jagannath Prasad, resident of Flat No. 302, Indralok Apartment, New Patliputra Colony, P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sangeet Deokuliar

For the Opposite Party/s : Smt. Anita Kumari

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 05-02-2018 Heard Mr. Anil Kumar Jha, learned senior counsel appearing on behalf of the petitioner, Mr. Ashok Kumar Choudhary, learned counsel appearing on behalf of the informant as well as learned Additional P.P.

The petitioner apprehends his arrest in Kotwali P.S. Case No.320 of 2017 registered under Section 406, 409, 419, 420, 467, 468, 471, 120B of the Indian Penal Code.

The informant filed written statement before the Officer-in-charge of Kotwali Police Station on the basis of which present F.I.R. was lodged.

The gist of the allegation is that accused no.2 is the Managing Director of M/S Jai Mangal Private Limited, a company



registered under the Company Act and family members of Jagdish Prasad were the share holders. Jagdish Prasad executed lease deed and leased out the entire property for 99 years to Jai Mangal Private Limited. The Company mortgaged the land and secured loan from Central Bank of India and BICICO but failed to repay the loan. The company went in liquidation in Company Case No.10 of 1996. The informant paid Rs.1,41,00,000/- and also undertakes to repay the entire dues of the company and when the company comes out of liquidation, the owner shall execute the deed of sale. On such information, a deed of agreement to sale was executed on 17.03.2010. Jagdish Prasad, the petitioner handed over the possession of the land to the purchaser for his use of development but the basement floor and ground floor remained to be handed over to the purchaser because two floors were in possession of different persons such as the tenants and others but it agreed that the moment, the company shall come out of liquidation, the petitioner hand over the possession to the aforesaid premises to the purchaser. The consideration amount was fixed to Rs.2,53,00,000/- as stated in clause (iv) page 4 of the deed of agreement to sale. The informant regularly paid the dues and the interest thereon and ultimately the liquidation proceeding was dropped and the company came out of liquidation but the tenants



remained in possession of the basement and ground floor of the premises. It is further stated that purchaser entered into an agreement with M/S Jai Mangal Private Ltd., the company owned by the petitioner and his family members to lease out the suit premises and also agreed to pay Rs.1 lakh per annum as rent. The period of lease was five years but when Jai Mangal Private Ltd. came out of liquidation, the petitioner refused to execute the sale deed.

Mr. Anil Kumar Jha, learned senior counsel for the petitioner submits that there is no offence under Indian penal Code is made out. At best, it is a case of non-performance of an agreement on the part of the petitioner and for that, the suit for specific performance can be filed. The petitioner never refused to execute the sale deed. Since the tenants are in possession of the property and they have not yet vacated the premises, therefore, the petitioner could not be able to hand over the possession of ground floor and basement to the purchaser.

On the other hand, Mr. Ashok Kumar Choudhary, learned counsel for the informant by tooth and nail opposed the prayer for anticipatory bail and submitted that it was the informant who rescued the petitioner out of deep trouble and paid the entire amount only then the petitioner and his company came out of



liquidation but now the petitioner has unilaterally rescinded the power of attorney. The petitioner did not get the premises vacated from the tenants nor took any action against them. On one pretext or other the petitioner is evading to execute the sale deed. The petitioner does not deserve anticipatory bail.

On perusal of the records, I find that of course, the informant came to rescue of the petitioner and paid Rs.1,41,00,000/- till the date of execution of deed of agreement to sale i.e. 17.03.2010 to the creditors of the petitioner and on such deed of agreement to sale was executed by the petitioner in favour of the informant. The deed of agreement to sale is very much explicit that the moment, the company comes out from the liquidation, and the entire loan paid, the petitioner shall execute the deed of agreement to sale. The petitioner on behalf of the company, Jai Mangal Private Limited also execute a deed of lease in favour of the informant with regard to the same lands but I do not find any material to show that the petitioner committed any act constituting an offence under Section 409 and other Sections of the Indian Penal Code. Prima facie, the dispute appears to be of civil nature as the petitioner failed to perform his part of contract in pursuance of agreement to sale.

Considering the facts aforesaid and the nature of



allegation made against the petitioner, the petitioner, above named, in the event of his arrest or surrender before the learned court below within a period of four weeks from the date of receipt/production of a copy of this order is directed to be enlarged on bail on furnishing bail bond of Rs.10,000/-(Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Patna in connection with Kotwali P.S. Case No.320 of 2017, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

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